

Opinion of the Court

**THE JUDICIAL BRANCH OF THE STUDENT
GOVERNMENT ASSOCIATION OF THE
UNIVERSITY OF TENNESSEE-KNOXVILLE**

Case No. 2017-5

SEAN FISHKIND, PLAINTIFF v. MORGAN-MICKEY-HUNTER CAMPAIGN,
DEFENDANTS

Decided on Summary Judgement on 09 April 2017

I

This case arises out of the grievance submitted by the plaintiff, Sean Fishkind, regarding the use of a trademarked design or logo in the campaign design by the political party, Morgan-Mickey-Hunter. The defendants used the “tri star design” in their campaign design, which according to the plaintiff, is trademarked by Volunteer Traditions under the registration number 4814822.

II

The design in question is not in violation of Section F, Section 3, Subsection E(2) of the election packet for three main reasons: (1) It does not have the “volunteer traditions” text nor the enclosed circle which is a requisite for the trademark, (2) it is clearly modeled after the state of Tennessee flag and not the clothing company “Volunteer Traditions” (3) the tri star is not trademarked nor is it even trademarkable.

III

Not even Volunteer Traditions owns the “tri star” design. Their trademark is specific to: “The mark consists of three stars inside of a circle surrounded by the words ‘VOLUNTEER TRADITIONS’ all inside an outer circle” as stated by the defendants. The design in question does not use these defining elements of the Volunteer Traditions mark, and the only element they used is not trademarkable because of 15 U.S.C. § 1052 which states:

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.”

Therefore, the tri-star cannot be trademarked.

IV

The precedence that is cited by the plaintiff, while related to trademarked designs, is different because Banks-Marsh were still using the trademarked checkerboard. Just because they added text does not mean an infringement did not happen. The plain fact of the matter is, the tri star logo is not trademarked. The checkerboard is trademarked.

* * *

THEREFORE, the court rules that the defendants did not use a trademarked logo. The case is dismissed.

It is so ordered.

HOWELL (C.J.) delivered the opinion of the court. DARBY, GORE, MORGAN, THOMAS, and WRIGHT joined.